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The CIA's Double Standard

MY TURN/FRANK SNEPP

The CIA disclaims any responsibility for Edwin Wilson and Frank Terpil, the two ex-agents who are now busily training and arming Libyan terrorists. But the truth is the CIA and the Justice Department have long had the legal means to put these shady dealers out of business.

Wilson, indicted in 1980 and '81 for selling explosives and murderous skills to the Kaddafi regime, joined the CIA in the early '50s, at a time when all agency employees and alumni were solemnly sworn never to assert any proprietary "claim" to what they learned on the job and never "to divulge, publish or reveal by any other means . . . classified information, intelligence or knowledge" without official approval. The same basic covenant was in effect when Terpil signed on in the early '60s.

Two years ago, in a ruling against me, the Supreme Court upheld the legality of these contracts. Though my case involved the unauthorized publication of a book about CIA activities, the contracts themselves make no distinction between disclosure in print and revelation by "sales pitch." Nor are their strictures limited to secrets or even knowledge gained *during* employment. According to a 1977 CIA regulation "subjects deemed to be of official Agency interest [and hence subject to pre-release approval] include, but are not limited to, current and former Agency activities, foreign intelligence and foreign political, economic, scientific, technical, military, sociological and geographical matters, including foreign aspects of international terrorist activity . . ." A later CIA directive generously exempts "topics that are totally unrelated to intelligence matters, such as the manuscript of a cookbook, [or] a treatise on gardening," but warns of "gray areas" and urges signatories to err on the side of caution by letting the CIA pre-screen all utterances that might be of official concern.

Changed Rules: Since I had sidestepped CIA scrutiny altogether, the Supreme Court decided I had broken my contract. For the same reason it found me guilty of having violated an "implicit obligation of trust." Normally this commercial-law concept is invoked only against people who sell their employers' trade secrets to competitors. But in my case the rules were changed. I was slapped with the standard penalty for a "breach of trust"—forfeiture of all profits—and was ordered to submit to CIA censorship in the future, even though the government had never once accused me of publishing *anything* confidential.

Terpil and Wilson clearly have done no less than I. If my book was a violation of implied and explicit covenants, so is their unfettered assistance to the Libyans.

The two also are guilty of one other offense that figured in the government's case against me. To substantiate its claim that my book had damaged the nation's security, the Justice Department argued that any such unauthorized release of intelligence-related material can undermine confidence in the CIA's security procedures and can thus frighten off "sources" who might otherwise be cooperative. The Supreme Court agreed, declaring that the "appearance of confidentiality" is often as essential to our security as confidentiality itself.

Why hasn't the agency used its legal powers to stop former agents who work for Kaddafi?

By nuzzling up to Kaddafi, Wilson and Terpil have most certainly imperiled the "appearance of confidentiality" and have discomfited intelligence sources. Why, then, weren't they sued long ago for breach of contract and trust? Part of the answer undoubtedly lies in the influence and interests of the CIA's "old boy" network. Not surprisingly, Wilson and Terpil aren't its only charter members who are out peddling "Company" know-how to unauthorized consumers. Former CIA topsiders Richard Helms, Henry Knoche, Vernon Walters and Theodore Shackley are all involved in business consultancies that cash in on what they learned while on the agency's payroll. Onetime CIA security chief Robert Gambino has retired to train private security guards, and scores of former field operatives have discarded cloak and dagger to pursue business interests in countries where they were once assigned. All of these agents-turned-entrepreneurs are guilty of my "transgression"—trading on knowledge that the government claims isn't ours to exploit. But because, as a group, they command more political clout than I, they've escaped prosecution.

Moreover, because of the muzziness of the employment contracts, they have been able to argue that they face no constraints on their business activities. Helms has commented that it would be "against the American tradition" for the government to attempt to impose such strictures.

Precedent: In fairness to him and his fellow scofflaws, the employment contracts are not models of clarity. They have been recast at least six times since the CIA's founding and have never been consistently enforced. So it's understandable that a signatory might misconstrue his "obligations."

Then too, there is the legitimate question: should Pentagon and State Department officials be permitted to transfer their professional expertise to the private sector while CIA veterans are forbidden to do so?

That last issue (like so many others) was, in fact, resolved by the Supreme Court's ruling against me. Under the principles the Court embraced, anybody who assumes a position of trust in the government thereby exposes himself to permanent official curbs on his speech and conduct, regardless of whether he signs a contract to this effect.

What remains to be seen is whether the Justice Department will now use the power it won in my case to punish and deter the likes of Wilson and Terpil. If it does, it will admittedly set a precedent for similar suits against Helms, Knoche, Henry Kissinger and other powerful former bureaucrats who are engaged in more benign business ventures arising from their government service. But if it doesn't—out of deference to Helms and Co.—it will make a mockery of the arguments marshaled against me and, more important, forfeit a chance to deliver a sobering object lesson to those Federal retirees who would betray their public trust by marketing their professional skills to terrorists and disreputable foreign governments.

Snepp, a former CIA analyst, is being sued by the Federal government for publishing an unauthorized book on the fall of Saigon.

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